



HOUSE BILL 543: Guardianship Roles of MHDDSA Providers

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Reps. Jones, Avila, Glazier, Turner
Analysis of: Third Edition

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Prepared by: Bill Patterson
Committee Counsel

SUMMARY: *House Bill 543 amends the qualifications for corporations or individuals appointed as guardians and requires the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to study the impact of the 1915(b)/(c) Medicaid Waiver and other mental health system reforms on public guardianship services.*

CURRENT LAW: Chapter 35A, Article 5, provides for the *appointment* of a guardian for an incompetent person. G.S. 35A-1210 specifies that any individual, corporation, or disinterested public agent may file with the clerk an application for the appointment of a guardian for an incompetent person. The application must provide the following:

- (1) Name, age, address, and county of residence of the ward or respondent;
- (2) Name, address, and county of residence of the applicant, relationship if any to the respondent or ward, and interest in the proceeding;
- (3) Name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;
- (4) General statement of the ward's or respondent's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he [or she] is entitled; and
- (5) Whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian, and whom the applicant recommends or seeks to have appointed as such guardian or guardians.

G.S. 35A-1213 establishes the *qualifications* of guardians. G.S. 35A-1213(a) provides that the clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agency. Subsection (b) provides requirements for appointment of a nonresident guardian. Subsection (c) provides requirements of a corporation appointed as a guardian. S.L. 2012-151 amended Subsection (c) to require that a corporation must meet the requirements outlined in Chapters 55 and 55D, provide a written copy of its charter to the Clerk of superior court, and if contracting with a public agency to serve as a guardian must attend and verify attendance at guardianship training. Subsection (d) pertains to disinterested public agents appointed by the clerk to serve a guardians and potential conflicts of interest. Subsection (e) generally prohibits an employee of a treatment facility from serving as a guardian for a ward who in an inpatient in or resident of a facility where the employee works. S.L. 2012-151 added subsection (f) which prohibits an individual who contracts with or is employed by an entity that contracts with an LME for the delivery of mental health, developmental disabilities, and substance abuse services, from serving as a guardian for a ward for whom the individual or entity is providing services, unless they are a member of the ward's immediate family under contract with the LME and serving as a guardian as of January 1, 2013.

Chapter 55 is the North Carolina Business Corporation Act. §55-1-40(4) establishes that a "**Corporation**" or "**domestic corporation**" means a corporation for profit or a corporation having capital stock that is incorporated under or subject to the provisions of this Chapter and that is not a



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foreign corporation, except that in G.S. 55-9-01 and G.S. 55-15-21, "corporation" includes domestic and foreign corporations. **Chapter 55D** pertains to Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations and Partnerships. §55D-1(1) provides that "Corporation" or "domestic corporation" is defined in G.S. 55-1-40(4).

BILL ANALYSIS:

Section 1 of HB 543 amends G.S. 35A-1213(c) to prohibit a corporation from being appointed as a guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contract or other arrangement with a local management entity (LME). The term "LME" includes an LME approved to operate the 1915(b)/(c) Medicaid Waiver.

Section 2 of the bill amends G.S. 35A-1213(f), which prohibits individuals who contract with, or are employed by an entity that contracts with, an LME for the delivery of mental health, developmental disabilities and substance abuse (MH/DD/SA) services, from serving as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is a parent of the ward or a member of the ward's immediate family. Section 2 would permit the following additional individuals to serve as guardian:

- The individual is a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with a LME for the delivery of MH/DD/SA services and is serving as a guardian as of January 1, 2013.
- The individual is biologically unrelated and was serving on March 1, 2013, as a guardian without compensation for guardianship services.

Section 3 requires the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to examine the impact of the 1915(b)/(c) Medicaid Waiver and other mental health system reforms on public guardianship services, including guardianship roles, responsibilities and procedures, and the effect on existing relationships between guardians and wards. The subcommittee is required to report its findings and recommendations to the Committee on or before May 9, 2014, at which time it will terminate.

EFFECTIVE DATE: House Bill 543 would become effective when it becomes law.

Theresa Matula, staff to the Senate Health Care Committee, substantially contributed to this summary.